

SECRETARY OF STATE[721]**Adopted and Filed Emergency**

Pursuant to the authority of 2016 Iowa Acts, House File 2273, section 16, and Iowa Code section 47.1, the Secretary of State amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

The amendments allow county commissioners of elections to utilize the United States Postal Service's Intelligent Mail barcode (IMb) as an alternative to traditional postmarks when determining whether absentee ballots have been introduced into the federal mail system by the date required under Iowa Code chapter 53. These amendments require a county commissioner of elections to provide notice to the Secretary of State once the county commissioner decides to use IMb Tracing. The amendments further provide a procedure that the Absentee and Special Voters Precinct Board must use to determine whether the absentee ballot did in fact enter the federal mail system on time. Finally, these amendments require that a county commissioner who notifies the Secretary of State that IMb Tracing will be used in an election cycle must seek a waiver from the Secretary of State before discontinuing IMb Tracing for that election cycle.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are unnecessary because 2016 Iowa Acts, House File 2273, section 16, expressly authorizes the filing of emergency rules.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(a), the Secretary of State also finds that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments made effective August 1, 2016, because 2016 Iowa Acts, House File 2273, section 16, provides for emergency adoption of the amendments.

After analysis and review of this rule making, no fiscal impact to the state has been found.

No waivers are provided for because 2016 Iowa Acts, House File 2273, and these amendments relate to voluntary use of IMb Tracing. If a county commissioner does not use IMb Tracing, these amendments would not apply.

The Secretary of State adopted these amendments on July 13, 2016.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are also published herein under Notice of Intended Action as **ARC 2669C** to allow public comment.

These amendments are intended to implement Iowa Code chapter 53 as amended by 2016 Iowa Acts, House File 2273, sections 11 to 15.

These amendments became effective August 1, 2016.

The following amendments are adopted.

ITEM 1. Amend subrule 21.1(7) as follows:

21.1(7) Absentee voting in postponed elections. Absentee ballots shall be delivered to voters pursuant to Iowa Code section 53.22 until the date the election is actually held. Absentee ballots shall be accepted at the commissioner's office until the hour the polls close on the date the election is held. Absentee ballots which are postmarked or which bear an Intelligent Mail barcode (IMb) traceable to a date of entry into the federal mail system no later than the day before the election is actually held shall be accepted if received no later than the time prescribed by the Iowa Code for the usual conduct of the election. The time shall be calculated from the date on which the election is held, not the date for which the election was originally scheduled. However, if absentee ballots have been tabulated before the election is postponed, the absentee ballots shall be sealed in an envelope by the absentee and special voters precinct board and stored securely until the date the election is actually held. The sealed envelopes shall be opened by the absentee and special voters precinct board on the date the election is actually held, counters on the tabulating equipment (if any) shall be reset to zero, and all absentee ballots tabulated on the original election date shall be retabulated.

ITEM 2. Amend subrule 21.2(2) as follows:

21.2(2) Original absentee ballot applications. The original absentee ballot application submitted electronically shall also be mailed or delivered to the commissioner. If mailed, the envelope bearing the original absentee ballot application shall be postmarked not later than the Friday before the election. This subrule shall not apply to documents submitted electronically by UOCAVA voters pursuant to rule 721—21.320(53).

a. The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the original absentee ballot application which was filed electronically is not received by the time the polls close on election day.

b. The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the postmark or Intelligent Mail barcode (IMb) on the envelope containing the original absentee ballot application is either illegible or later than the Friday before the election.

ITEM 3. Amend rule 721—21.12(47,53) as follows:

721—21.12(47,53) Absentee ballot receipt deadline when the United States post office is closed on the deadline for receipt of absentee ballots. When the United States post office is closed in observance of a federal holiday and is not delivering mail on the deadline for receipt of absentee ballots as set forth in Iowa Code section 53.17, the deadline to receive mailed ~~and absentee ballots that are determined to have entered the federal mail system timely, postmarked absentee ballots as indicated by the postmark or Intelligent Mail barcode (IMb) Tracing,~~ shall move to the next business day on which mail delivery is available.

This rule is intended to implement Iowa Code sections 47.1, and 47.4 and sections 53.17 and 52.22 as amended by 2016 Iowa Acts, House File 2273, sections 11 to 15.

ITEM 4. Adopt the following new rule 721—21.14(53):

721—21.14(53) Intelligent Mail barcode (IMb) Tracing. A commissioner may choose to use Intelligent Mail barcode (IMb) Tracing (IMb Tracing) to determine when an absentee ballot has entered into the federal mail system as an alternative to a traditional postmark verification.

21.14(1) Notice to state commissioner of elections required.

a. Prior to a commissioner's implementation of IMb Tracing for an election, notice must be sent to the state commissioner.

b. A commissioner may not implement or discontinue the use of IMb Tracing while an election is open once absentee ballots have been mailed pursuant to Iowa Code section 53.8.

c. The state commissioner may issue a waiver to paragraph "b" if a commissioner's ability to use IMb Tracing is impacted by issues beyond the commissioner's control.

21.14(2) Determining the eligibility of IMb-marked absentee ballots. An absentee ballot shall be counted once it is determined that the absentee ballot arrived in the federal mail system by the deadline specified in Iowa Code chapter 53. The absentee ballot's entry into the federal mail system may be verified either by a postmark or by information obtained through IMb Tracing. For absentee ballots received after election day, but before the official canvass:

a. If the postmark or IMb Tracing information indicates that an absentee ballot was received by the deadline specified in Iowa Code chapter 53, the ballot shall be included for canvass by the absentee and special voters precinct board (board).

b. If the postmark is illegible, missing, or dated on or after election day, the commissioner shall attempt to verify the absentee ballot's entry into the federal mail system by using the IMb Tracing information for the ballot. The commissioner shall provide all of the materials to the board.

c. If there is a date discrepancy between the postmark and the IMb, the earlier of the two shall determine whether or not the absentee ballot can be counted.

d. If neither the postmark nor the IMb indicate that the absentee ballot entered the federal mail system by the deadline specified in Iowa Code chapter 53, the absentee ballot shall not be counted.

e. The information provided by the commissioner to the board must contain the numeric value assigned to the IMb barcode and a full report from the United States Postal Service.

f. A board member from each political party for partisan elections or two members from the board for nonpartisan elections shall review the IMb Tracing information provided by the commissioner and shall certify the information by initialing the envelope and report.

g. If the board concludes that the IMb Tracing information verifies that the absentee ballot entered the federal mail system by the deadline specified in Iowa Code chapter 53, the absentee ballot shall be counted.

21.14(3) *Report to the state commissioner.* A commissioner who makes use of IMb Tracing shall file a report with the state commissioner for each general election no later than the first day of December following each general election. The report shall be on a form prescribed by the state commissioner.

This rule is intended to implement Iowa Code sections 53.17 and 53.22 as amended by 2016 Iowa Acts, House File 2273, sections 11 to 15.

[Filed Emergency 7/15/16, effective 8/1/16]

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